MONTANA LEGISLATIVE HISTORY

Chapter 161 ~~19~~ 2005

Bill HB 206 S_____ Original bill & history ✓ C

H. Committee on Natural Resources

Hearing Date(s) 1/19 ___C

ex 1/28 ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Natural Resources

Hearing Date(s) 3/16 ___C

ex 3/19 ___C

_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Bill Draft Number: LC0229
Bill Type - Number: HB 206
Short Title: Revise controlled groundwater areas
Primary Sponsor: Art Noonan

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 43

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/08/2005			
(H) Signed by Governor	04/07/2005			
(H) Transmitted to Governor	03/30/2005			
(S) Signed by President	03/30/2005			
(H) Signed by Speaker	03/30/2005			
(C) Sent to Printing	03/24/2005			
(H) Returned from Enrolling	03/24/2005			
(H) Sent to Enrolling	03/24/2005			
(S) Returned to House	03/23/2005			
(S) 3rd Reading Concurred	03/23/2005	46	2	
(S) Scheduled for 3rd Reading	03/23/2005			
(S) 2nd Reading Concurred on Voice Vote	03/22/2005	50	0	
(S) Scheduled for 2nd Reading	03/22/2005			
(S) Scheduled for 2nd Reading	03/21/2005			
(S) Committee Report--Bill Concurred	03/19/2005			(S) Natural Resources
(S) Committee Executive Action--Bill Concurred	03/19/2005	7	2	(S) Natural Resources
(S) Hearing	03/16/2005			(S) Natural Resources
(S) Referred to Committee	02/22/2005			(S) Natural Resources
(S) First Reading	02/22/2005			
(H) Transmitted to Senate	02/03/2005			
(H) 3rd Reading Passed	02/03/2005	74	20	
(H) Scheduled for 3rd Reading	02/03/2005			
(H) 2nd Reading Passed	02/02/2005	82	18	
(H) Scheduled for 2nd Reading	02/02/2005			
(C) Sent to Printing	01/31/2005			
(H) Committee Report--Bill Passed as Amended	01/31/2005			(H) Natural Resources

(H) Committee Executive Action--Bill Passed as Amended	01/31/2005	17	1 (H) Natural Resources
(H) Hearing	01/19/2005		(H) Natural Resources
(H) Referred to Committee	01/05/2005		(H) Natural Resources
(C) Introduced Bill Text Available Electronically	12/23/2004		
(H) Introduced	12/23/2004		
(C) Pre-Introduction Letter Sent	11/15/2004		
(C) Draft in Assembly/Executive Director Review	11/15/2004		
(C) Draft in Final Drafter Review	11/09/2004		
(C) Bill Draft Text Available Electronically	11/09/2004		
(C) Draft in Input/Proofing	11/09/2004		
(C) Draft to Drafter - Edit Review [CAJ]	11/08/2004		
(C) Draft in Edit	11/08/2004		
(C) Draft in Legal Review	11/08/2004		
(C) Draft to Requester for Review	11/08/2004		
(C) Draft Taken Off Hold	10/04/2004		
(C) Draft On Hold	09/17/2004		
(C) Draft Request Received	08/02/2004		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Environmental Quality Council	
Drafter	Lee Evans	Krista
By Request Of	Department of Natural Resources and Conservation	
Primary Sponsor	Noonan	Art

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Water		Simple	WAT

Additional Bill Information

Probable Fiscal Note: No

Preintroduction Required: Y
Session Law Ch. Number: 161
DEADLINE
Category: General Bills
Transmittal Date: 03/01/2005
Return (with 2nd house amendments) Date: 04/06/2005

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	07-APR-05	

HOUSE BILL NO. 206

INTRODUCED BY A. NOONAN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES BE PAID FOR BY THE PETITIONERS UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definition.** As used in this part, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years.

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not

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limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306~~(1)~~;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection

(4)."

Section 3. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under ~~this~~ subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

~~(2)~~(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection ~~(1)~~ (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection ~~(1)~~ (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under ~~this~~ subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication

proceedings provided for in 85-2-236.

~~(3)~~(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet; ~~and~~

(b) the appropriation is less than 30 acre-feet a year; ~~and~~

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. ~~As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within~~

(7) Within 60 days after constructing ~~the~~ an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall ~~then~~ automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

~~(4)~~(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 4. Section 85-2-322, MCA, is amended to read:

"85-2-322. Hearing -- order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by

mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under ~~this section and~~ 85-2-321 and this section. If the order suspends action on pending applications, the department shall notify the applicant that action on ~~his~~ the applicant's application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306~~(3)~~, 85-2-310, and 85-2-311 or continue the suspension under this section."

Section 5. Section 85-2-507, MCA, is amended to read:

"85-2-507. Limiting withdrawals -- modification of order. (1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the department shall make written findings and an order. The department shall by order declare the area in question to be a controlled ground water area if the department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers ~~which~~ that wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include but is not limited to the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes,

including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions for well spacing requirements, well construction constraints, and prior department approval before well drilling;

~~(g)~~ (h) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may by order designate the area in question to be a temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area must be designated as such for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. The department may, for sufficient cause, extend the time period for an additional ~~2~~ 4 years~~,~~. The time period for an extension must be in 2-year increments. The department shall find sufficient cause for each extension. For each extension in time, ~~and in this case,~~ all ground water appropriators in the controlled ground water area must be notified of the extension.

(b) During the 2-year period~~,~~ and any extensions of the time period, ~~the department shall commence~~ studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area

must be commenced under the supervision and control of the department. The petitioners are responsible for the costs of the study. Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing must be conducted by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension of the period, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending, the department may restrict further development of the subarea."

Section 6. Section 85-2-508, MCA, is amended to read:

"**85-2-508. Controlled ground water areas -- permits to appropriate.** (1) A person may appropriate ground water in a controlled ground water area ~~only~~ by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; or

(b) following the requirements of an order issued pursuant to 85-2-507.

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift, ~~(~~in the case of pumping developments~~)~~, or within a reasonable or feasible reduction of pressure, ~~(~~in the case of artesian developments~~)~~."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN JOHN ROSS** on January 19, 2005 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:
Rep. Christopher Harris, Vice Chairman (D)
Rep. John (Jack) W. Ross, Vice Chairman (R)
Rep. Debby Barrett (R)
Rep. Norma Bixby (D)
Rep. Dee L. Brown (R)
Rep. Paul Clark (D)
Rep. Sue Dickenson (D)
Rep. George Everett (R)
Rep. Kevin T. Furey (D)
Rep. Gail Gutsche (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Rick Maedje (R)
Rep. Veronica Small-Eastman (D)

Members Excused: Rep. Jim Peterson, Chairman (R)

Members Absent: Rep. Carol Lambert (R)
Rep. David E. Wanzenried (D)

Staff Present: Joe Kolman, Legislative Branch
Debra Polhemus, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 206, 1/14/2005
Executive Action: HB 78, HB 185

HEARING ON HB 206

Opening Statement by Sponsor:

00:01:22 **REP. ART NOONAN (D), HD 73,** opened the hearing on HB 206, Revise controlled groundwater areas.

EXHIBIT(nah14a01)

Proponents' Testimony:

00:04:22 Jack Stults, Administrator, Department of Natural Resources and Conservation

EXHIBIT(nah14a02)
EXHIBIT(nah14a03)

00:18:28 Dana Hupp, Fidelity Exploration & Production Company

00:19:10 Tim Davis, Montana Smart Growth Coalition

00:19:56 **CHAIRMAN PETERSON** arrived at meeting.

Opponents' Testimony:

00:20:11 Kathy Gallagher, Hydrogeologist, Summerfield Professional Services, Inc., Bozeman

EXHIBIT(nah14a04)
EXHIBIT(nah14a05)
EXHIBIT(nah14a06)

00:28:35 Michele Reinhart, Northern Plains Resource Council

00:30:26 Steve Kelly, Montana EcoSystems Defense Council, Bozeman

00:37:09 Delight Gollaher, Family and Ranching Interest

Informational Testimony: None.

Questions from Committee Members and Responses:

00:43:12 **REP. JOPEK**
00:47:02 **REP. DICKENSON**
00:50:23 **REP. FUREY**
00:52:43 **REP. BROWN**
00:55:46 **REP. GUTSCHE**
00:58:43 **REP. MAEDJE**
01:06:00 **REP. HARRIS**
01:09:49 **REP. EVERETT**
01:12:09 **REP. CLARK**
01:18:44 **REP. FUREY**
01:20:13 **REP. BARRETT**

Closing by Sponsor:

01:23:14 **REP. ART NOONAN (D), HD 73,** closed hearing on HB 206.

01:26:46 break
01:36:02 resume

01:36:02 Following committee break, **CHAIRMAN PETERSON** assumed chairmanship position.

EXECUTIVE ACTION ON HB 78

01:36:58 **Motion: REP. GUTSCHE moved that HB 78 BE AMENDED.**

Discussion:
01:38:01 **REP. HARRIS**

01:38:54 **Vote: Motion carried unanimously by voice vote.**
EXHIBIT(nah14a07)

01:39:14 **Motion: REP. HARRIS moved that HB 78 DO PASS AS AMENDED.**

Discussion:
01:39:25 **REP. BARRETT**
01:40:29 **REP. MAEDJE**
01:41:08 Edward A. Thamke, Montana Department of Environmental Quality

01:42:13 **Vote: Motion carried unanimously by voice vote.**

EXECUTIVE ACTION ON HB 185

01:43:14 **Motion: REP. HARRIS moved that HB 185 DO PASS.**

01:43:56 **Motion: REP. MAEDJE moved that HB 185 BE AMENDED.**
EXHIBIT(nah14a08)

Discussion:
01:44:14 **REP. HARRIS**
01:44:31 **REP. MAEDJE**

01:45:12 **Vote: Motion carried unanimously by voice vote.**

01:45:26 **Motion: REP. HARRIS moved that HB 185 DO PASS AS AMENDED.**

EXHIBIT 1
DATE 1.19.05
HB 206

Amendments to House Bill No. 206
1st Reading Copy

Requested by Representative Art Noonan

For the House Natural Resources Committee

Prepared by Joe Kolman
January 18, 2005 (1:12pm)

1. Title, page 1, line 9.
Strike: "REQUIRING"
Insert: "PROVIDING"
Following: "STUDIES"
Insert: "MAY"

2. Page 6, line 21.
Following: "drilling"
Insert: ", unless the well is regulated pursuant to Title 82, chapter 11"

3. Page 7, line 6 through line 7.
Strike: "The" on line 6 through "study" on line 7
Insert: "Petitioners, at the discretion of and in participation with the department, may be required to secure funding for the study, consult with local government, and provide notice to affected parties"

- END -

EXHIBIT 2
DATE 1.19.05
HB 206

TESTIMONY
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

House Bill No. 206

Jack Stults, Administrator
Department of Natural Resources and Conservation
Water Resources Division

January 19, 2005

**A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; ...
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

Introduction

Representative Noonan agreed to carry this bill on behalf of the department, and I want to thank him for his willingness to do so.

Discussion

This bill is to revise the statutes related to Controlled Ground Water Areas. Controlled ground water areas can be proposed by local water users, state or local health agencies, or by the Department of Natural Resources & Conservation. The two primary reasons for proposing a controlled ground water area are related to ground water availability and ground water quality. Currently, there are 16 controlled ground water areas located in Montana; 9 are controlled because of water quality problems, the other 7 are controlled because of water availability problems. Three of these areas are temporarily closed to allow for ground water studies, to identify the cause of reduced ground water supplies.

The controlled Ground Water Area statutes have been part of Montana water law since 1961. The first ground water closure was granted in 1967 by the State Engineer's Office, the predecessor to the DNRC's Water Resources Division. It was the South Pines Controlled Ground Water in Wibaux County and was granted because of dwindling ground water supplies in the area. Also worth noting is the Powder River Basin controlled ground water area put in place in 1999 in anticipation of development of coal-bed methane to protect existing water wells in the area.

The ability to designate controlled ground water areas has been very beneficial. Most people thought the laws would be used primarily for water availability concerns. In fact, today there are more controlled areas based on water quality concerns. That leads directly to the main purpose of this bill.

Currently the statute requires all ground water diversions to go through the full water rights permitting process if within the boundaries of any control area, either temporary or permanent. The permit application is effective for use in ground water areas where water availability is a concern because one of the criteria that must be met before a permit can be

granted is a showing that water is available in the amount requested. However, if a controlled area is granted for water quality problems, the permit application criteria are extraneous and unnecessary. This bill would continue to allow that a permit application process could be used, however, the bill changes the statute to also allow that the order issued for the controlled area could include requirements that address only the circumstances for the specific area.

Another change proposed by this bill is to allow up to 6 years for ground water monitoring. Current statute limits ground water monitoring to 4 years. Ground water characteristics are difficult to monitor and are often times directly related to climate patterns. Monitoring needs to be for a length of time that will be best for gathering the required information on which to base a decision for a permanent ground water closure.

Current law designates some corrective control provisions that can be included in an order designating a controlled ground water area. For example, a provision can be added stating that the department cannot accept any applications for ground water within the area or can limit withdrawals or designating a total withdrawal by day, month or year. This bill adds a few more provisions, such as a well spacing requirement, well construction constraints, or that department approval is required before drilling a well. These requirements have been placed in orders, and are especially useful in preventing the spread of pollution.

Finally, the bill sets forth who is responsible for the ground water study costs, when a study area is warranted. Current statute does not clearly identify that the costs may need to be borne by those who will be directly impacted by the ground water study. This bill changes the statute so that petitioners know right away of their obligation to take the lead in seeking and acquiring funding, including researching grants and forming partnerships, to cover the costs of ground water monitoring.

Conclusion

The controlled ground water area statutes have provided a very effective mechanism for managing ground water quality and quantity problems. The amendments proposed in this bill improve the effectiveness of the statute. The DNRC urges the Committee to adopt these amendments to the controlled ground water area statutes. Please give HB206 a "do pass" recommendation from the committee.

d Groundwater Areas
ary 2005

EXHIBIT 3
DATE 1.19.05
HB 206

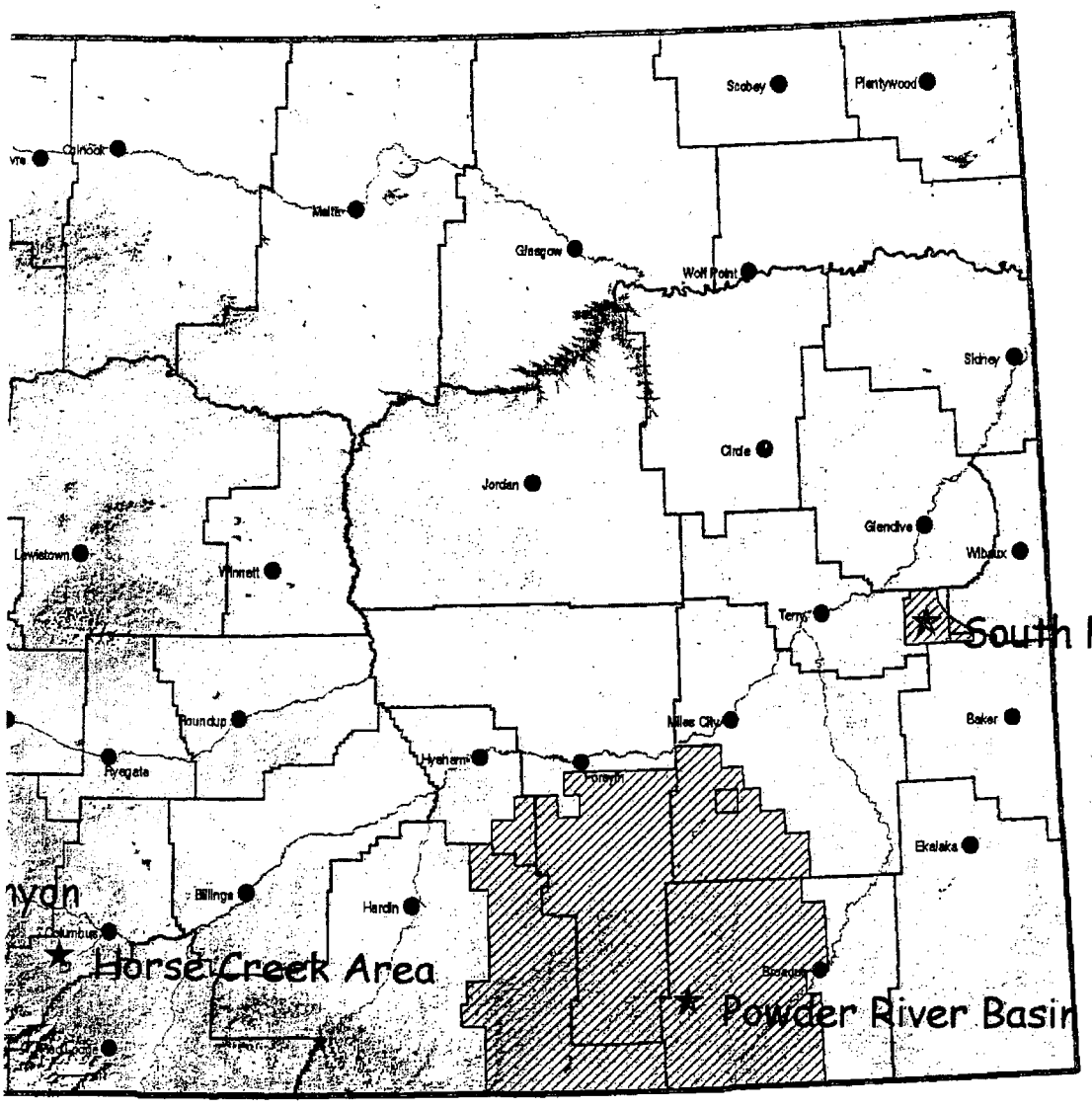

EXHIBIT 3
DATE 1.19.05
HB 206

Note: Locations for controlled groundwater locations from DNRC Water Resources Division GIS Database; ancillary data from Montana State Library, Natural Resource Information System.
Map created by DNRC-WRD-GIS Program, January 2005.

Montana Controll
Janu

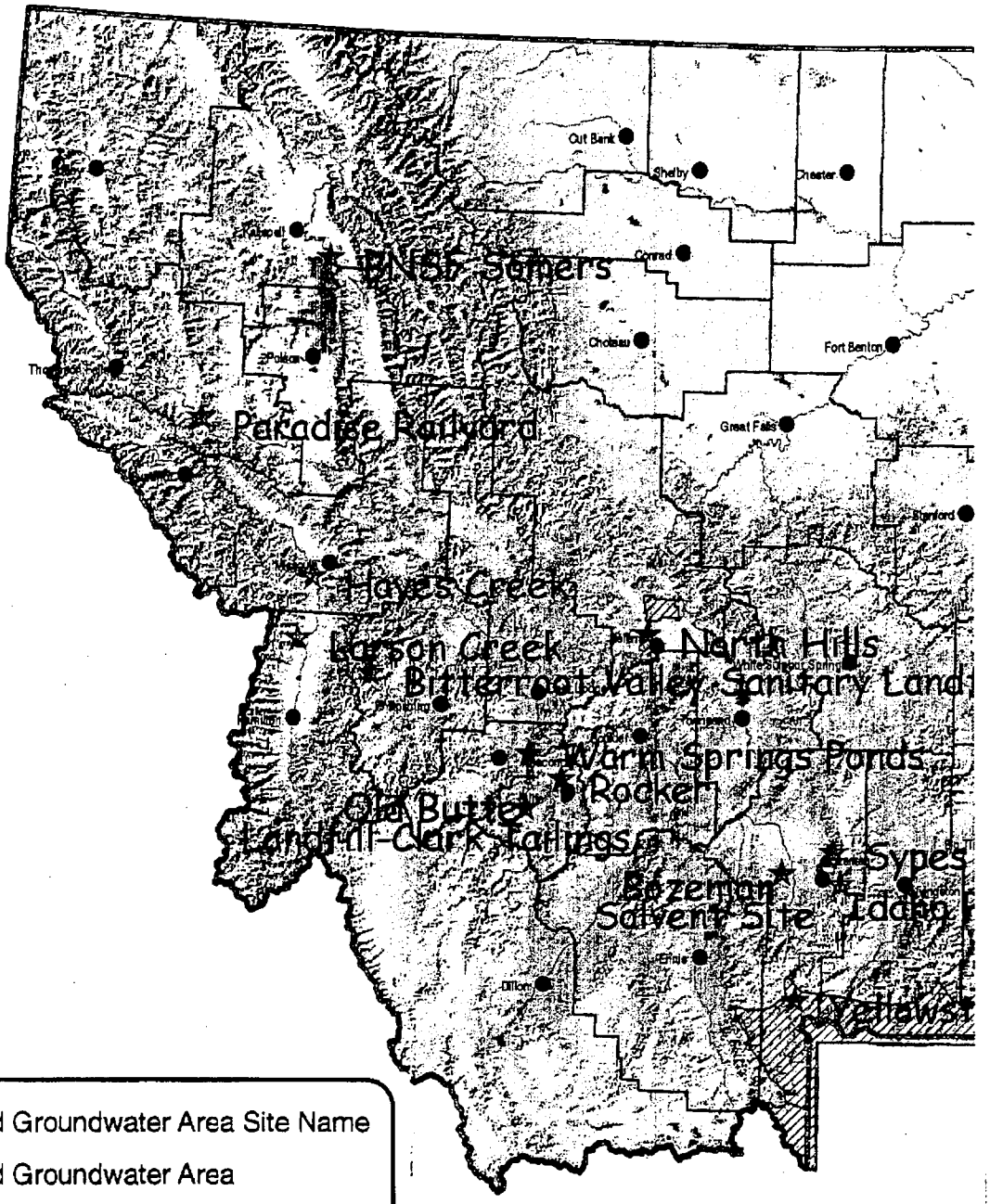

EXHIBIT 4
DATE 1-19-05
HB 206

Testimony of Kathy Gallagher, Principal Hydrogeologist (SPSI, Bozeman)
January 19, 2005

Thank you for the opportunity to testify on HB 206. I am speaking on behalf of the petitioners (including myself) of the Sypes Canyon Temporary Controlled Groundwater Area (CGWA), located north of Bozeman.

While I have a number of issues with the current and proposed legislation, I would like to focus on two areas:

1.) The added provision in 85-2-507(5)(a) to require petitioners to pay for groundwater studies, and
2.) The corrective controls listed in 85-2-507(4) and referenced in (5)(a).

My initial concern upon reading the proposed bill is the clause requiring that petitioners granted a temporary groundwater study be responsible for the cost of a groundwater study that would be under the supervision and control of the DNRC. This will virtually eliminate the use of the CGWA provision in the law since it is unlikely any petitioners' group could afford to sponsor a groundwater study. If the DNRC can't afford to do the studies, how do they expect the people to foot the costs? Please recall Montana's placing on the median income list for the United States.

The most difficult part of losing the CGWA in practice (it would obviously still be on the books), is that it is the only provision in the law that allows for characterization of an aquifer system, not just a subdivision-sized piece of the aquifer. Only by looking at the aquifer as a whole can sustainable yields be determined. DNRC has continued to appropriate groundwater in high growth areas, such as Sypes Canyon, without an understanding of the amount of water available.

We initiated our petition in 2000 because a number of wells in our area were going dry. As part of the petition process outlined in 85-2-306, the petitioners are required to provide adequate data showing adverse impacts to the aquifer for the process even to proceed. Had we not had a qualified hydrogeologist, (me), it is unlikely the residents would have had the technical knowledge to even file the petition. And despite numerous pleas to the DNRC from residents with declining water levels or failing wells, no assistance was provided by the department other than a sympathetic ear and the recommendation to hire a hydrogeologist and petition for a CGWA.

We did proceed with the petition and hired an attorney to represent us at the hearing. While I donated my time, the group had to pay for the substantial legal fees. Had I billed for my time, the group would have paid over $10,000 in professional fees to get through the initial petition process and hearing. We were granted a temporary CGWA, but filed an appeal to get a corrective control measure to protect our groundwater during the study period. Our appeal failed. The only provision DNRC applied was that all new wells had to be permitted prior to drilling. All fees collected were for these permits ($200-$400 were placed in the general fund).

The DNRC, while required under 85-2-306(5)(b) made little progress in initiating the "studies necessary to obtain the facts needed to assist in designation of a permanent CGWA." A flume was installed in Sypes Canyon Creek and the Gallatin Local Water Quality District collected infrequent water levels in a small portion of the study area. In fact, study area-wide data

collection was not initiated until well into the two-year extension period, and it is questionable whether adequate data can be collected in the remaining time to make reasonable conclusions on the aquifer's sustainability.

In the mean time, since no limitations were specified by the DNRC order, well construction seemed to escalate in the area. Additionally, a water rights application for a large housing development adjacent to the most impacted area was filed. A group of residents filed objections to the application and over $25,000 was required to fight the water right. This included over $10,000 of objectors' money for professional fees and more than $15,000 in donated hydrogeologist fees as well as a portion of legal fees. The water right was not granted and the applicants filed an appeal. Therefore, we had additional costs responding to their appeal, which they also lost. Since none of the applicants' legal or professional fees were donated, their costs were likely in excess of $50,000 not including initial hydrological studies for their subdivision (>$100,000).

So, after about three years, the area residents had provided between $35,000 to $40,000 in direct contributions and in-kind services and still knew nothing more about the sustainability of the aquifer. It is beyond the ability of any area residents, except possibly the most affluent in the state, to provide funding for a groundwater study. Also, few neighborhoods have their own hydrogeologist.

The DNRCs mission is not only to appropriate water but also to protect the State's water and its senior water rights holders. Without knowledge, protection is impossible while appropriation continues without pause. We need a strong agency with qualified people to evaluate impacts caused by rapid growth and drought.

So what do we do?

We feel the proposed provision creates undue burden on the State groundwater users. Therefore, we urge you to strike the modification to the existing rules to require payment of the study costs by petitioners. We urge the DNRC to make a case for badly needed additional funding for adequate staff to review groundwater applications. At last count only two hydrogeologists were on staff to cover the entire state, a groundwater dependent state. My personal preference would be to take away the groundwater, and even surface water, responsibilities from the DNRC and delegate these responsibilities to an agency with more "teeth," such as the DEQ.

Regarding my second concern, corrective controls, I would suggest that corrective controls be required whenever a temporary or permanent CGWA is designated. This would have saved both the applicants and objectors tens of thousands of dollars. We suggest that the term "may" on page 6, lines 2 and 27 be changed to "shall" in order to protect groundwater while studies are being conducted.

It is time for the lawmakers and funds appropriators to give groundwater the attention and importance it deserves as the primary source of drinking water in this state. Depleting aquifers is unacceptable under any law and violates Article IX of our State Constitution. We need to be drafting legislation to ensure sustainable aquifers for current and future users, not creating laws to discourage state residents from protecting their often stressed groundwater supplies.

EXHIBIT 5
DATE 1.19.05
HB 206

January 19, 2005

Montana House of Representatives
Natural Resources Committee

Subject: Comments on House Bill 206

Dear Legislators:

On behalf of the Sypes Canyon Homeowners' Coalition in Bozeman, I am writing to express our serious concerns about the changes proposed by DNRC introduced in House Bill 206 for controlled ground water areas (CGWA). In particular, we are strongly opposed to the change in 85-2-507 (5)(b) that states ". . .studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area must be commenced under the supervision and control of the department. The petitioners are responsible for the costs of the study. Our experience over the last four years in getting a CGWA established in the larger Sypes Canyon area has been expensive, difficult, and, in many ways, an unfair burden on the petitioners.

The Sypes Canyon Homeowners' Coalition (SCHC) formed in 2000 in response to serious issues related to both our water quantity and quality. Several homeowners were experiencing problems with declining well levels; some had to haul water from town to their homes. As people in our area came together and communicated about these issues, we became aware that water problems were much more pervasive than we originally suspected. In fact, we discovered that there were twenty years' worth of data that homeowners' throughout this area had collected and presented to the state (both DNRC and DEQ) in an attempt to seek help to address what appeared to be declining water levels. In every case, the burden of defining and researching the problem was placed on the homeowners. When the SCHC formed, we were fortunate to have an experienced, well-respected hydrogeologist in our group who could provide the expertise we needed to meet this task. Our attempts, however, to obtain help from the state agencies were frustrating encounters. Though individuals in these agencies acknowledged problems existed, they also told us that they did not have the staff or the funding to do anything for us and that until serious problems emerged (the absence of water), there was nothing they could do. We argued consistently that it made much more sense to address groundwater issues before an extreme situation occurred. Everything we did in our area was a citizen-driven initiative—we worked hard over four years to raise enough money to hire lawyers to represent us in DNRC hearings and to prepare evidence for presentations before the Gallatin County Commissioners. I donated four years' worth of time, our hydrogeologist, Kathy Gallagher, donated thousands of dollars of time, and many volunteers donated both time and money. We had to pay thousands of dollars to force state and county agencies to do what we understood to be their jobs. The only avenue we had to provide the time to conduct more studies in this area was the controlled

groundwater area designation. That DNRC would still supervise and control this study but not pay for it is completely inappropriate. Homeowners who get to the point of being able to establish CGWAs already have invested significant money in getting there—DNRC must contribute to these studies in order to meet its obligation—and to do its job—in the state. That DNRC needs to have additional funding in order to do so is a case that needs to be made. But asking homeowners to carry this burden—to finance the job DNRC is supposed to do—is wrong.

I appreciate the opportunity to comment on this bill and appeal to you to consider the needs—and the burdens—already imposed on homeowners in CGWAs.

Sincerely,

Ann Bertagnolli

Ann Bertagnolli
Sypes Canyon Homeowners' Coalition

EXHIBIT 6
DATE 1.19.05
HB 206

January 18, 2005

Montana House of Representatives
Natural Resources Committee

Subject: Comments on House Bill 206

Dear Legislators:

I have reviewed the changes proposed by DNRC introduced in House Bill 206 for controlled ground water areas (CGWA). I am opposed to the changes proposed in 85-2-507 (5)(b) that would place the cost of conducting any studies needed for DNRC to make an informed decision on designation of a permanent CGWA on the petitioners. The current law already requires that petitioners for a proposed CGWA compile and provide enough information to convince DNRC that a temporary CGWA is warranted. In effect, the petition process provides a way for citizens in Montana to express concerns with management of ground-water resources, and request that DNRC evaluate the problem and take action if necessary. If DNRC does not agree, they can deny the petition.

Homeowners in the Sypes Canyon area, north of Bozeman, used the CGWA petition process to express concerns with declining ground-water levels. The residents asked for DNRC's help since they are the primary state agency responsible for management of ground-water resources. DNRC agreed and established a temporary CGWA. It would be unfair and inappropriate for DNRC to then require that the petitioners pay the costs to complete any studies DNRC feels are necessary to determine if the temporary CGWA should be made permanent. Not only does DNRC propose to require the petitioners to pay the costs of any studies, they also propose that any studies be conducted under the supervision and control of DNRC. They don't want to pay for the study but they want to have control over it.

I understand it costs DNRC money to hold hearings, review facts, and manage controlled ground water areas. However, once DNRC establishes a temporary or permanent controlled ground water area, they already charge a $400 fee to obtain a permit to drill a well. Currently the money collected for these permits goes back into the general fund. I would propose that rather than requiring petitioners to pay for any needed studies, that all fees collected within controlled ground water areas be used to help cover the costs of administration and any studies conducted by or under the supervision of DNRC.

Sincerely,

Alan English
Manager, Gallatin Local Water Quality District

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN JIM PETERSON**, on January 28, 2005 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Jim Peterson, Chairman (R)
Rep. Christopher Harris, Vice Chairman (D)
Rep. John (Jack) W. Ross, Vice Chairman (R)
Rep. Debby Barrett (R)
Rep. Norma Bixby (D)
Rep. Dee L. Brown (R)
Rep. Paul Clark (D)
Rep. Sue Dickenson (D)
Rep. George Everett (R)
Rep. Kevin T. Furey (D)
Rep. Gail Gutsche (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Carol Lambert (R)
Rep. Rick Maedje (R)
Rep. Veronica Small-Eastman (D)
Rep. David E. Wanzenried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Joe Kolman, Legislative Branch
Debra Polhemus, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 403, 1/25/2005
Executive Action: HB 57; HB 206; HB 236; HB 293; HB 303

HEARING ON HB 403

Opening Statement by Sponsor:

00:02:45 **REP. MIKE JOPEK (D), HD 4**, opened the hearing on **HB 403**, Protect existing ground water resources and users.

EXHIBIT(nah22a01)
EXHIBIT(nah22a02)

Proponents' Testimony:

00:12:15 Tim Davis, Montana Smart Growth Coalition
00:14:37 Matt Clifford, Conservation Director, Clark Fork Coalition
00:19:50 Linda Stoll, Montana Local Health Officers' Group (7 counties)
EXHIBIT(nah22a03)
00:21:16 John Wilson, Montana Trout Unlimited
EXHIBIT(nah22a04)
00:29:46 Gregory Sullivan

Opponents' Testimony:

00:31:07 Michael Kakuk, Montana Association for Realtors
00:35:19 Terry Lindsay, Water Well Driller, Montana Water Well Drillers Association
EXHIBIT(nah22a05)
00:44:58 Linda Lindsay, Realtor, Century 21 Real Estate
00:46:38 Delight Gollaher, Cascade, Montana

Informational Testimony:

00:53:48 Jack Stults, DNRC

Questions from Committee Members and Responses:

00:55:43 **REP. FUREY**
00:58:07 **REP. GUTSCHE**
01:02:08 **REP. BROWN**
01:02:59 Jack Stults, Department of Natural Resources and Conservation
01:04:23 **REP. EVERETT**
01:08:03 **REP. CLARK**

Closing by Sponsor:

01:16:38 **REP. MIKE JOPEK (D), HD 4** closed hearing on **HB 403.**

EXECUTIVE ACTION ON HB 206

02:04:29 **Motion: REP. GUTSCHE moved that HB 206 BE AMENDED.**

EXHIBIT(nah22a08)

Discussion:

02:05:35 Jack Stults, Department of Natural Resources and Conservation

02:07:37 **REP. CLARK**

02:09:10 **REP. ROSS**

02:09:51 **Vote: Motion carried unanimously by voice vote.**

02:10:10 **Motion/Vote: REP. GUTSCHE moved that HB 206 DO PASS AS AMENDED. Motion carried 17-1 by voice vote with REP. BARRETT voting no.**

EXECUTIVE ACTION ON HB 236

02:11:42 **Motion: REP. PETERSON moved that HB 236 BE AMENDED.**

EXHIBIT(nah22a09)

Discussion:

02:13:26 **REP. BARRETT**

02:14:38 **REP. HARRIS**

02:14:51 **Vote: Motion carried unanimously by voice vote.**

02:15:09 **Motion: REP. MAEDJE moved that HB 236 DO PASS AS AMENDED.**

Discussion:

02:15:27 **REP. SMALL-EASTMAN**

02:16:16 **Vote: Motion carried 17-1 by voice vote with REP. BARRETT voting no.**

EXECUTIVE ACTION ON HB 293

02:17:32 **Motion: REP. HARRIS moved that HB 293 BE AMENDED.**

EXHIBIT(nah22a10)

Discussion:

02:18:28 **REP. DICKENSON**

02:18:52 **REP. HARRIS**

02:19:19 **Vote: Motion carried unanimously by voice vote with REP. BROWN voting by proxy.**

EXHIBIT 8
DATE 1.28.05
HB 206

Amendments to House Bill No. 206
1st Reading Copy

Requested by Representative Art Noonan

For the House Natural Resources Committee

Prepared by Joe Kolman
January 25, 2005 (11:25am)

1. Title, page 1, line 9.
Strike: "BE PAID FOR BY THE PETITIONERS"
Insert: "ARE"

2. Page 6, line 21.
Following: "drilling"
Insert: ", unless the well is regulated pursuant to Title 82, chapter 11"

3. Page 7, line 6 through line 7.
Strike: "The" on line 6 through "study." on line 7

- END -

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
ROLL CALL

DATE: 1.28.05

NAME	PRESENT	ABSENT	EXCUSED
Chairman, Jim Peterson	✓		
Vice Chair, Rep. Jack Ross	✓		
Vice Chair, Chris... Harris	✓		
Rep. Debby Barrett	✓		
Rep. Norma Bixby	✓		
Rep. Dee Brown	✓		
Rep. Paul Clark	✓		
Rep. Sue Dickenson	✓		
Rep. George Everett	✓		
Rep. Gail Gutsche	✓		
Rep. Ralph Heinert	✓		
Rep. Kevin Furey	✓		
Rep. Llew Jones	✓		
Rep. Mike Jopek	✓		
Rep. Carol Lambert	✓		
Rep. Rick Maedje	✓		
Rep. V. Small-Eastman	✓		
Rep. Dave Wanzenried	✓		

Roll Taken By: Debra L. Polhemus

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **House Bill 206** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Jim Peterson, Chair

And, that such amendments read:

1. Title, page 1, line 9.
Strike: "BE PAID FOR BY THE PETITIONERS"
Insert: "ARE"

2. Page 6, line 21.
Following: "drilling"
Insert: ", unless the well is regulated pursuant to Title 82, chapter 11"

3. Page 7, line 6 through line 7.
Strike: "The" on line 6 through "study." on line 7

- END -

Committee Vote:
Yes 17, No 1.

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1/31/05

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

00:00:00
Call to Order: By **SEN. AUBYN CURTISS**, on March 16, 2005 at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Aubyn Curtiss (R)
Sen. Kelly Gebhardt (R)
Sen. Dan Harrington (D)
Sen. Greg Lind (D)
Sen. Gary L. Perry (R)
Sen. Bill Tash (R)
Sen. Ken Toole (D)
Sen. Mike Wheat (D)

Members Excused: Sen. Glenn Roush, Chairman (D).

Members Absent: None.

Staff Present: Peg Holwick, Committee Secretary
Krista Lee Evans, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 174, 3/11/2005; HB 606, 3/11/2005; HB 206, 3/11/2005; HB 361, 3/11/2005
Executive Action:	HB 174, HJ 21

HEARING ON HB 206

01:33:03
Opening Statement by Sponsor:

REP. ART NOONAN (D), HD 73, opened the hearing on **HB 206,** Revise controlled groundwater areas.

Proponents' Testimony:

01:42:11 **Jack Stults, Department of Natural Resources and Conservation (DNRC), Water Resources Division**
EXHIBIT(nas58a10)

Opponents' Testimony:

01:50:48 **Kathy Gallagher, Sypes Canyon**

Informational Testimony:

01:58:07 **Michael Kakuk, Lobbyist**

01:59:30
Questions from Committee Members and Responses:

02:13:14
Closing by Sponsor:

HEARING ON HB 361

02:19:28
Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 361,** Revise opencut mining act.

Proponents' Testimony:

02:20:42 **Michael Kakuk, Lobbyist**

EXHIBIT(nas58a11)

02:21:59 **Gary Forester, Lobbyist**
02:22:27 **Neil Harrington, DEQ**
02:26:02 **E.J. Redding, MDU Resources/JIL**

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3/16/05
BILL NO. HB 206

FACT SHEET
HB 206

Department of Natural Resources and Conservation
Water Resources Division
March 16, 2005

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES BE PAID FOR BY THE PETITIONERS UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

The Issue

Current law requires that all water right applications located within a controlled ground water area be considered for issuance of a water right permit. The water right permit requirements do not allow for the flexibility needed to adequately assess ground water use and impacts in some controlled ground water areas. Furthermore, if the controls needed are related to avoiding the spread of pollutants, the water rights permitting process is extraneous and unnecessary, requiring it is wasteful and costly.

Current law needs to clarify the department's role in areas where a temporary controlled ground water may be designated. Currently, the law allows for a 2-year ground water study time period and an additional 2-year extension. Ground water is a difficult resource to monitor and in some areas and during some climatic periods additional time is needed to monitor the ground water.

The Solution

This legislation would allow the agency flexibility to authorize a controlled ground water area subject to the permit requirements or to other requirements set forth in an order so that the controls address only the circumstances in the specific area. Further, the legislation is only applicable to water wells. It does not impact oil or gas wells.

This legislation also clarifies that for any areas that are designated as a temporary controlled ground water area, the department must supervise the studies and fact gathering.

This legislation would allow for up to 6 years of ground water monitoring.

Benefits to Montana

By allowing flexibility, the public can be assured that only the controls necessary to address the specific conditions will be imposed, thereby avoiding unnecessary regulation

CONTROLLED GROUND WATER AREAS

WATER QUANTITY CLOSURES	Effective Date	County
South Pine Controlled Ground Water Area	11/1/1967	Wibaux
Larson Creek Controlled Ground Water Area	11/14/1988	Ravalli
Hayes Creek Controlled Ground Water Area	05/25/1995	Missoula
Powder River Basin Controlled Ground Water Area	12/15/1999	Custer
Sypes Canyon Controlled Ground Water Area – temporary	04/26/2002	Gallatin
North Hills Controlled Ground Water Area – temporary	10/11/2002	Lewis & Cl
Horse Creek Controlled Ground Water Area – temporary	02/12/2004	Stillwater

WATER QUALITY CLOSURE	Effective Date	County
US National Park Service-MT Compact Yellowstone CGWA	01/31/1994	Park
Warm Springs Ponds Controlled Ground Water Area	05/25/1995	Deer Lod
Rocker Controlled Ground Water Area	05/30/1997	Silver Bo
Bozeman Solvent Site Controlled Ground Water Area	07/20/1998	Gallatin
Old Butte Landfill/Clark Tailings Site CGWA	12/17/1999	Silver Bo
Idaho Pole Controlled Ground Water Area	11/30/2001	Gallatin
BNSF Paradise Controlled Ground Water Area	08/19/2002	Sanders
BNSF Somers Site Controlled Ground Water Area	05/09/2003	Flathead
Bitterroot Valley Sanitary Landfill CGWA	02/09/2004	Ravalli

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

00:00:01
Call to Order: By **CHAIRMAN GLENN ROUSH**, on March 18, 2005 at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:
Sen. Glenn Roush, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Kelly Gebhardt (R)
Sen. Dan Harrington (D)
Sen. Greg Lind (D)
Sen. Gary L. Perry (R)
Sen. Bill Tash (R)
Sen. Ken Toole (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Peg Holwick, Committee Secretary
Krista Lee Evans, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SJ 29 3/11/2005; HB 453 3/11/2005; HJ 9, 3/11/2005; 3/11/2005
Executive Action:	SJ 29, HB 206, HB 361 (started; motion withdrawn)

01:36:23 **SEN. AUBYN CURTISS, SD 1, FORTINE**
01:38:54 **Jay Bodner, Montana Public Lands Council and Montana Stockgrower's Association**

Opponents' Testimony:

01:40:08 **The Honorable Pat Williams, United States Congressman**
01:50:02 **Tim Baker, Executive Director, Montana Wilderness Association (MWA)**
EXHIBIT(nas60a05)

01:50:33 **REP. ART NOONAN, HD 73, BUTTE**

Informational Testimony:

EXHIBIT(nas60a06)

02:01:50
Questions from Committee Members and Responses:

02:14:50
Closing by Sponsor:

EXECUTIVE ACTION ON HB 206

02:24:39
Motion: SEN. WHEAT moved that HB 206 BE CONCURRED IN.

Discussion:

02:30:14
Motion/Vote: SEN. WHEAT moved that HB 206 BE CONCURRED IN. Motion carried 7-2 by voice vote with SEN. CURTISS and SEN. TASH voting no. SEN. HARRINGTON and SEN. TOOLE voted by Proxy.

EXECUTIVE ACTION ON HB 361

02:31:27
Motion: SEN. LIND moved that HB 361 BE CONCURRED IN.

Discussion:

02:33:24 **Motion withdrawn**

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

NATURAL RESOURCES

DATE 3/18/05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. GLENN ROUSH (D), CHAIRMAN	✓		
SEN. KEN TOOLE (D), VICE CHAIRMAN			✓
SEN. AUBYN CURTISS (R)	✓		
SEN. KELLY GEBHARDT (R)	✓		
SEN. DAN HARRINGTON (D)	✓		
SEN. GREG LIND (D)	✓		
SEN. GARY PERRY (R)	✓		
SEN. BILL TASH (R)	✓		
SEN. MICHAEL WHEAT (D)	✓		
KRISTA LEE EVANS, LSD	✓		
PEG HOLWICK, COMMITTEE SECRETARY	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 206** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Glenn Roush, Chair

To be carried by Senator Dan Harrington

- END -

Committee Vote:
Yes 7, No 2.

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PROXY VOTE

I, the undersigned, hereby authorize Senator Lind to vote my proxy on any issue before the Senate Nat Res Committee held on 3/19/05, 2005.

SJ 29 Yes
HB 206 Yes

SENATOR
STATE OF MONTANA

3/18/05

Greg Smith
has my
Vote on
all issues
Dan Hanft

HB206 Yes

2005 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 206
INTRODUCED BY NOONAN
BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES ARE UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition. As used in this part, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years.

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings

conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306~~(1)~~;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4)."

Section 3. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not

have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under ~~this~~ subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

~~(2)~~(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection ~~(1)~~ (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection ~~(1)~~ (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under ~~this~~ subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

~~(3)~~(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet; ~~and~~

(b) the appropriation is less than 30 acre-feet a year; ~~and~~

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. ~~As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within~~

(7) Within 60 days after constructing ~~the~~ an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall ~~then~~ automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

~~(4)~~(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 4. Section 85-2-322, MCA, is amended to read:

"85-2-322. Hearing -- order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under ~~this section and~~ 85-2-321 and this section. If the order suspends action on pending applications, the department shall notify the applicant that action on ~~his~~ the applicant's application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306~~(3)~~, 85-2-310, and 85-2-311 or continue the suspension under this section."

Section 5. Section 85-2-507, MCA, is amended to read:

"85-2-507. Limiting withdrawals -- modification of order. (1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the department shall make written findings and an order. The department shall by order declare the area in question to be a controlled ground water area if the department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers ~~which~~ that wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include but is not limited to the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate

ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

~~(g)~~(h) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may by order designate the area in question to be a temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area must be designated as such for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. The department may, for sufficient cause, extend the time period for an additional ~~2~~ 4 years~~;~~. The time period for an extension must be in 2-year increments. The department shall find sufficient cause for each extension. For each extension in time, ~~and in this case,~~ all ground water appropriators in the controlled ground water area must be notified of the extension.

(b) During the 2-year period~~;~~ and any extensions of the time period, ~~the department shall commence~~ studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area must be commenced under the supervision and control of the department. ~~.~~ Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing must be served notice of this hearing by

mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing must be conducted by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension of the period, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending, the department may restrict further development of the subarea."

Section 6. Section 85-2-508, MCA, is amended to read:

"85-2-508. Controlled ground water areas -- permits to appropriate. (1) A person may appropriate ground water in a controlled ground water area ~~only~~ by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; or

(b) following the requirements of an order issued pursuant to 85-2-507.

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift, ~~(~~in the case of pumping developments~~)~~, or within a reasonable or feasible reduction of pressure, ~~(~~in the case of artesian

developments~~)~~."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of HB 206 *(HB0206.ENR)*

Processed for the Web on March 24, 2005 (5:14pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

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This bill in WP 5.1 | All versions of all bills (WP 5.1 format)

Authorized print version w/line numbers (PDF format)

[NEW SEARCH]

Prepared by Montana Legislative Services

(406) 444-3064

interest rate on Land Bank Commissioner's loans for a period of two years", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

SOUTH TRIMBLE
Clerk.

I certify that this Act originated in the House of Representatives.

SOUTH TRIMBLE
Clerk.

IN THE SENATE OF THE UNITED STATES,
July 22, 1937.

Certificate of the Senate.

The Senate having proceeded to reconsider the bill (H. R. 6763) "An Act to extend for one additional year the 3½-per-centum interest rate on certain Federal land-bank loans, to provide a 4-per-centum interest rate on such loans for the period July 1, 1938, to June 30, 1939, and to provide for a 4-per-centum interest rate on Land Bank Commissioner's loans for a period of two years", returned by the President of the United States to the House of Representatives, in which it originated, with his objections, and passed by the House on a reconsideration of the same, it was

Resolved, That the said bill, pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

EDWIN A. HALSEY
Secretary.

[CHAPTER 517]

AN ACT

July 22, 1937
[H. R. 7562]
[Public, No. 210]

To create the Farmers' Home Corporation, to promote more secure occupancy of farms and farm homes, to correct the economic instability resulting from some present forms of farm tenancy, and for other purposes.

The Bankhead-Jones Farm Tenant Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Bankhead-Jones Farm Tenant Act".

Title I—Farm tenant provisions.

TITLE I—FARM TENANT PROVISIONS

Power of Secretary of Agriculture.

POWER OF SECRETARY

Loans for acquisition of farms, etc.

SECTION 1. (a) The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized to make loans in the United States and in the Territories of Alaska and Hawaii and in Puerto Rico to persons eligible to receive the benefits of this title to enable such persons to acquire farms.

(b) Only farm tenants, farm laborers, sharecroppers, and other individuals who obtain, or who recently obtained, the major portion of their income from farming operations shall be eligible to receive the benefits of this title. In making available the benefits of this title, the Secretary shall give preference to persons who are married, or who have dependent families, or, wherever practicable, to persons who are able to make an initial down payment, or who are owners of livestock and farm implements necessary successfully to carry on farming operations. No person shall be eligible who is not a citizen of the United States.

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(c) No loan shall be made for the acquisition of any farm unless it is of such size as the Secretary determines to be sufficient to constitute an efficient farm-management unit and to enable a diligent farm family to carry on successful farming of a type which the Secretary deems can be successfully carried on in the locality in which the farm is situated.

COUNTY COMMITTEES AND LOANS

County committees and loans.

SEC. 2. (a) The County Committee established under section 42 shall— *Post*, p. 529.

Powers, etc.

(1) Examine applications (filed with the county agent in the county, or with such other person as the Secretary may designate) of persons desiring to finance the acquisition of farms in the county by means of a loan from the Secretary under this title.

(2) Examine and appraise farms in the county with respect to which an application for a loan is made.

(b) If the committee finds that an applicant is eligible to receive the benefits of this title, that by reason of his character, ability, and experience he is likely successfully to carry out undertakings required of him under a loan which may be made under this title, and that the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the making of a loan with respect thereto will carry out the purposes of this title, it shall so certify to the Secretary. The committee shall also certify to the Secretary the amount which the committee finds is the reasonable value of the farm.

(c) No certification under this section shall be made with respect to any farm in which any member of the committee or any person related to such member within the third degree of consanguinity or affinity has any property interest, direct or indirect, or in which they or either of them have had such interest within one year prior to the date of certification.

(d) No loan shall be made to any person or with respect to any farm unless certification as required under this section has been made with respect to such person and such farm by the committee.

TERMS OF LOANS

Amount and terms of loans.

SEC. 3. (a) Loans made under this title shall be in such amount (not in excess of the amount certified by the County Committee to be the value of the farm) as may be necessary to enable the borrower to acquire the farm and for necessary repairs and improvements thereon, and shall be secured by a first mortgage or deed of trust on the farm.

Provisions to be incorporated.

(b) The instruments under which the loan is made and security given therefor shall—

(1) Provide for the repayment of the loan within an agreed period of not more than forty years from the making of the loan.

(2) Provide for the payment of interest on the unpaid balance of the loan at the rate of 3 per centum per annum.

(3) Provide for the repayment of the unpaid balance of the loan, together with interest thereon, in installments in accordance with amortization schedules prescribed by the Secretary.

(4) Be in such form and contain such covenants as the Secretary shall prescribe to secure the payment of the unpaid balance of the loan, together with interest thereon, to protect the security,

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and to assure that the farm will be maintained in repair, and waste and exhaustion of the farm prevented, and that such proper farming practices as the Secretary shall prescribe will be carried out.

(5) Provide that the borrower shall pay taxes and assessments on the farm to the proper taxing authorities, and insure and pay for insurance on farm buildings.

(6) Provide that upon the borrower's assigning, selling, or otherwise transferring the farm, or any interest therein, without the consent of the Secretary, or upon default in the performance of, or upon any failure to comply with, any covenant or condition contained in such instruments, or upon involuntary transfer or sale, the Secretary may declare the amount unpaid immediately due and payable, and that, without the consent of the Secretary, no final payment shall be accepted, or release of the Secretary's interest be made, less than five years after the making of the loan.

Prepayments.

(c) Except as provided in paragraph (6) of subsection (b), no instrument provided for in this section shall prohibit the prepayment of any sum due under it.

Agricultural compositions and extensions; repayment provisions. 47 Stat. 1470; 48 Stat. 925, 1289; 49 Stat. 942. 11 U. S. C. § 203; Supp. II, § 203.

(d) No provision of section 75, as amended, of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (U. S. C., 1934 ed., title 11, sec. 203; Supp. II, title 11, sec. 203), otherwise applicable in respect of any indebtedness incurred under this title by any beneficiary thereof, shall be applicable in respect of such indebtedness until such beneficiary has repaid at least 15 per centum thereof.

EQUITABLE DISTRIBUTION OF LOANS

Equitable distribution of loans.

SEC. 4. In making loans under this title, the amount which is devoted to such purpose during any fiscal year shall be distributed equitably among the several States and Territories on the basis of farm population and the prevalence of tenancy, as determined by the Secretary.

AVOIDANCE OF PRODUCTION EXPANSION

Avoidance of production expansion. 49 Stat. 1148. 16 U. S. C., Supp. II, § 590g.

SEC. 5. In carrying out this title, the Secretary shall give due consideration to the desirability of avoiding the expansion of production for market of basic commodities where such expansion would defeat the policy of Congress as set forth in section 7 (a) (5) of the Soil Conservation and Domestic Allotment Act, as amended, and shall, so far as practicable, assist beneficiaries of the program under this title to become established upon lands now in cultivation.

APPROPRIATION

Appropriation authorized. *Post*, p. 762.

SEC. 6. To carry out the provisions of this title, there is authorized to be appropriated not to exceed $10,000,000 for the fiscal year ending June 30, 1938, not to exceed $25,000,000 for the fiscal year ending June 30, 1939, and not to exceed $50,000,000 for each fiscal year thereafter. Not more than 5 per centum of the sums appropriated for any fiscal year in pursuance of this section shall be available for administrative expenses in carrying out this title during such fiscal year.

Amount for administrative expenses.

Title II—Rehabilitation loans.

TITLE II—REHABILITATION LOANS

BORROWERS AND TERMS

Borrowers and terms.

SEC. 21. (a) Out of the funds made available under section 23, the Secretary shall have power to make loans to eligible individuals for the purchase of livestock, farm equipment, supplies, and for other

farm needs (including minor improvements and minor repairs to real property), and for the refinancing of indebtedness, and for family subsistence.

Interest rate.

(b) Loans made under this section shall bear interest at a rate not in excess of 3 per centum per annum, and shall have maturities not in excess of five years, and may be renewed. Such loans shall be payable in such installments as the Secretary may provide in the loan agreement. All loans made under this title shall be secured by a chattel mortgage, a lien on crops, and an assignment of proceeds from the sale of agricultural products, or by any one or more of the foregoing.

Security.

Persons eligible.

(c) Only farm owners, farm tenants, farm laborers, sharecroppers, and other individuals who obtain, or who recently obtained, the major portion of their income from farming operations, and who cannot obtain credit on reasonable terms from any federally incorporated lending institution, shall be eligible for loans under this section.

DEBT ADJUSTMENT

Debt adjustment.

SEC. 22. The Secretary shall have power to assist in the voluntary adjustment of indebtedness between farm debtors and their creditors and may cooperate with and pay the whole or part of the expenses of State, Territorial, and local agencies and committees engaged in such debt adjustment. He is also authorized to continue and carry out undertakings with respect to farm debt adjustment uncompleted at the time when appropriations for the purpose of this section are first available. Services furnished by the Secretary under this section shall be without charge to the debtor or creditor.

APPROPRIATION

Appropriation. Use of balances.

SEC. 23. (a) For the fiscal year ending June 30, 1938, the balances of funds available to the Secretary for loans and relief to farmers, pursuant to Executive Order Numbered 7530 of December 31, 1936, as amended by Executive Order Numbered 7557 of February 19, 1937, which are unexpended on June 30, 1937, are authorized to be appropriated to carry out the provisions of this title.

Allotments out of relief, etc., appropriations.

(b) The President is authorized to allot to the Secretary, out of appropriations made for relief or work relief for any fiscal year ending prior to July 1, 1939, such sums as he determines to be necessary to carry out the provisions of this title and to enable the Secretary to carry out such other forms of rehabilitation of individuals eligible under this title to receive loans as may be authorized by law and designated in the Executive order directing the allotment.

TITLE III—RETIREMENT OF SUBMARGINAL LAND

Title III—Retirement of submarginal land.

PROGRAM

Development of program of conservation, etc.

SEC. 31. The Secretary is authorized and directed to develop a program of land conservation and land utilization, including the retirement of lands which are submarginal or not primarily suitable for cultivation, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, mitigating floods, preventing impairment of dams and reservoirs, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare.

POWERS UNDER LAND PROGRAM

Powers under land program.

SEC. 32. To effectuate the program provided for in section 31, the Secretary is authorized—

Acquisition of lands not suitable for cultivation, etc.

(a) To acquire by purchase, gift, or devise, or by transfer from any agency of the United States or from any State, Territory, or political subdivision, submarginal land and land not primarily suitable for cultivation, and interests in and options on such land. Such property may be acquired subject to any reservations, outstanding estates, interests, easements, or other encumbrances which the Secretary determines will not interfere with the utilization of such property for the purposes of this title.

Reservations, etc.

Adapting land to most beneficial use.

(b) To protect, improve, develop, and administer any property so acquired and to construct such structures thereon as may be necessary to adapt it to its most beneficial use.

Disposition of acquired property.

(c) To sell, exchange, lease, or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of this title, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes. The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purposes of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies.

Grants for public purposes.

(d) With respect to any land, or any interest therein, acquired by, or transferred to, the Secretary for the purposes of this title, to make dedications or grants, in his discretion, for any public purpose, and to grant licenses and easements upon such terms as he deems reasonable.

Cooperative program of land conservation, etc.

(e) To cooperate with Federal, State, Territorial, and other public agencies in developing plans for a program of land conservation and land utilization, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively, the purposes of this title, and to disseminate information concerning these activities.

Rules and regulations.

(f) To make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the purposes of this title, in order to conserve and utilize it or advance the purposes of this title. Any violation of such rules and regulations shall be punished as prescribed in section 5388 of the Revised Statutes, as amended (U. S. C., 1934 ed., title 18, sec. 104).

Penalty for violation.
R. S. § 5388.
18 U. S. C. § 104.

PAYMENTS TO COUNTIES

Payments to counties.

SEC. 33. As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under this title, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In case the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payments to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land.

APPROPRIATION

Appropriation authorized.
Post, p. 762.

SEC. 34. To carry out the provisions of this title, there is authorized to be appropriated not to exceed $10,000,000 for the fiscal year ending June 30, 1938, and not to exceed $20,000,000 for each of the two fiscal years thereafter.

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TITLE IV—GENERAL PROVISIONS

Title IV—General provisions.

FARMERS' HOME CORPORATION

Farmers' Home Corporation; creation, principal office, etc.

SEC. 40. (a) There is hereby created as an agency, of and within the Department of Agriculture, a body corporate with the name "Farmers' Home Corporation" (in this Act called the Corporation). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Board of Directors.

Powers and duties.

(b) The Secretary shall have power to delegate to the Corporation such powers and duties conferred upon him under title I or title II, or both, and such powers under title IV as relate to the exercise of the powers and duties so delegated, as he deems may be necessary to the efficient carrying out of the purposes of such titles and may be executed by the Corporation, and to transfer to the Corporation such funds available for such purposes as he deems necessary. In connection with and in the exercise of such powers and duties so delegated, all provisions of this Act relating to the powers and duties of, and limitations upon, the Secretary shall apply to the Corporation in the same manner as to the Secretary, and the term "Secretary" shall be construed to include "Corporation".

Capital stock.

(c) The Corporation shall have a nominal capital stock in an amount determined and subscribed for by the Secretary. Receipts for payments for or on account of such stock shall be issued by the Corporation to the Secretary and shall be evidence of the stock ownership of the United States.

Board of directors.

(d) The management of the Corporation shall be vested in a board of directors (in this Act called the Board) subject to the general supervision of the Secretary. The Board shall consist of three persons employed in the Department of Agriculture who shall be designated by the Secretary. Vacancies in the Board, so long as there are two members in office, shall not impair the powers of the Board to execute its functions and two of the members in office shall constitute a quorum for the transaction of business. The directors, appointed as hereinbefore provided, shall receive no additional compensation for their services as such directors but may be allowed travel and subsistence expenses when engaged in business of the Corporation outside of the District of Columbia.

Administrator, to be executive officer.

(e) The Board may select, subject to the approval of the Secretary, an administrator, who shall be the executive officer of the Corporation, with such power and authority as may be conferred upon him by the Board.

Corporate powers.

(f) The Corporation—

(1) Shall have succession in its corporate name;

(2) May adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) May sue and be sued in its corporate name in any court of competent jurisdiction, State or Federal: *Provided*, That the prosecution and defense of all litigation to which the Corporation may be a party shall be conducted under the supervision of the Attorney General, and the Corporation shall be represented by the United States Attorneys for the districts, respectively, in which such litigation may arise, or by such other attorney or attorneys as may, under the law, be designated by the Attorney General: *And provided further*, That no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property;

Provisos.
Supervision of litigation.

Corporation to be free from attachment, etc.

Bylaws.

(4) May adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised and enjoyed;

Franking privilege.

(5) Shall be entitled to the free use of the United States mails in the same manner as other executive agencies of the Government;

Powers vested in Corporation.

(6) Shall have such powers as may be necessary or appropriate for the exercise of the powers vested in the Corporation (including, but subject to the limitations of this Act, the power to make contracts, and to purchase or lease, and to hold or dispose of, such real and personal property as it deems necessary) and all such incidental powers as are customary in corporations generally. The Board shall define the authority and duties of the officers and employees of the Corporation, delegate to them such of the powers vested in the Corporation as it may determine, and require bonds of such of them as it may designate and fix the penalties and pay the premiums of such bonds.

Injuries to Government employees; benefits of Act extended to.
39 Stat. 742.
5 U. S. C. § 751.

(g) Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916, as amended, shall extend to employees of the Corporation.

Depositories.

(h) All money of the Corporation not otherwise employed may be deposited with the Treasurer of the United States or in any bank approved by the Secretary of the Treasury, subject to withdrawal by the Corporation at any time, or with the approval of the Secretary of the Treasury may be invested in obligations of the United States. Subject to the approval of the Secretary of the Treasury, the Federal Reserve banks are hereby authorized and directed to act as depositories, custodians, and fiscal agents for the Corporation in the performance of its powers.

Corporation, etc., to be tax exempt.

(i) The Corporation, including its franchises, its capital, reserves, and surplus and its income and property shall, except as otherwise provided in section 50 (a), be exempt from all taxation now or hereafter imposed by the United States or any State, Territory, District, dependency, or political subdivision.

Accounts.

(j) The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary a complete report as to the business of the Corporation.

Secretary and Corporation.

ADMINISTRATIVE POWERS OF SECRETARY AND CORPORATION

Administrative powers.

SEC. 41. For the purposes of this Act, the Secretary shall have power to—

Personnel provisions.

(a) Appoint (without regard to the civil-service laws and regulations) and fix the compensation of such officers and employees as may be necessary. No person (except as to positions requiring technical training and experience for which no one possessing the requisite technical training and experience is available within the area) shall be appointed or transferred under this Act to any position in an office in a State or Territory the operations of which are confined to such State or Territory or a portion thereof, or in a regional office outside the District of Columbia the operations of which extend to more than one, or portions of more than one, State or Territory, unless such person has been an actual and bona-fide resident of the State or Territory, or region, as the case may be, in which such office is located, for a period of not less than one year next preceding the appointment or transfer to such position (disregarding periods of residence outside such State or Territory, or region, as the case may be, while in the Federal Government serv-

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ice). If the operations of the office are confined to a portion of a single State or Territory, the Secretary in making appointments or transfers to such office shall, except in the classes of cases exempted from the preceding sentence, appoint or transfer only persons who are residents of such portion of the State or Territory: *Provided*, That hereafter, wherever practicable, all appointments of persons to the Federal service for employment within the District of Columbia, under the provisions of this Act, whether such appointments be within the classified civil service or otherwise, shall be apportioned among the several States and the District of Columbia upon the basis of population as ascertained at the last preceding census.

Proviso. Apportionment of appointments.

(b) Accept and utilize voluntary and uncompensated services, and, with the consent of the agency concerned, utilize the officers, employees, equipment, and information of any agency of the Federal Government, or of any State, Territory, or political subdivision.

Acceptance of voluntary services.

(c) Within the limits of appropriations made therefor, make necessary expenditures for personal services and rent at the seat of government and elsewhere; contract stenographic reporting services; purchase and exchange of supplies and equipment, law books, books of reference, directories, periodicals, newspapers, and press clippings; travel and subsistence expenses, including the expense of attendance at meetings and conferences; purchase, operation, and maintenance, at the seat of government and elsewhere, of motor-propelled passenger-carrying and other vehicles; printing and binding; and for such other facilities and services as he may from time to time find necessary for the proper administration of this Act.

Expenditures.

(d) Make contracts for services and purchases of supplies without regard to the provisions of section 3709 of the Revised Statutes (U. S. C., 1934 ed., title 41, sec. 5) when the aggregate amount involved is less than $300.

Contracts for services and supplies. R. S. § 3709. 41 U. S. C. § 5.

(e) Make payments prior to audit and settlement by the General Accounting Office.

Payments before audit, etc.

(f) Acquire land and interests therein without regard to section 355 of the Revised Statutes, as amended. This subsection shall not apply with respect to the acquisition of land or interests in land under title III.

Land acquisition, etc.; exception. R. S. § 355. 33 U. S. C. § 733; 50 U. S. C. § 175.

(g) Compromise claims and obligations arising under, and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into pursuant to, this Act, as circumstances may require.

Compromise of claims, etc.

(h) Collect all claims and obligations arising under this Act, or under any mortgage, lease, contract, or agreement entered into pursuant to this Act, and, if in his judgment necessary and advisable, to pursue the same to final collection in any court having jurisdiction: *Provided*, That the prosecution and defense of all litigation under this Act shall be conducted under the supervision of the Attorney General, and the legal representation shall be by the United States Attorneys for the districts, respectively, in which such litigation may arise, or by such other attorney or attorneys as may, under the law, be designated by the Attorney General.

Collections.

Proviso. Supervision of litigation.

(i) Make such rules and regulations as he deems necessary to carry out this Act.

Rules, etc.

COUNTY COMMITTEE

SEC. 42. (a) The Secretary is authorized and directed to appoint in each county in which activities are carried on under title I a county committee composed of three farmers residing in the county.

County committees. *Ante*, p. 522.

(b) Each member of the committee shall be allowed compensation at the rate of $3 per day while engaged in the performance of duties under this Act but such compensation shall not be allowed with

Compensation.

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respect to more than five days in a month. In addition, they shall be allowed such amounts as the Secretary may prescribe for necessary traveling and subsistence expenses.

Meetings.

(c) The committee shall meet on the call of the county agent in the county, or on the call of such other person as the Secretary may designate. Two members of the committee shall constitute a quorum. The Secretary shall prescribe rules governing the procedure of the committees, furnish forms and equipment necessary for the performance of their duties, and authorize and provide for the compensation of such clerical assistants as he deems may be required by any committee.

Duties.

(d) Committees established under this Act shall, in addition to the duties specifically imposed under this Act, perform such other duties under this Act as the Secretary may require of them.

Resettlement projects.

RESETTLEMENT PROJECTS

Functions of Secretary continued.

SEC. 43. The Secretary is authorized to continue to perform such of the functions vested in him pursuant to Executive Order Numbered 7530 of December 31, 1936, as amended by Executive Order Numbered 7557 of February 19, 1937, and pursuant to Public Act Numbered 845, approved June 29, 1936 (49 Stat. 2035), as shall be necessary only for the completion and administration of those resettlement projects, rural rehabilitation projects for resettlement purposes, and land development and land utilization projects, for which funds have been allotted by the President, and the balances of funds available to the Secretary for said purposes which are unexpended on June 30, 1937, are authorized to be appropriated to carry out said purposes: *Provided*, That any land held by the United States under the supervision of the Secretary pursuant to said Executive orders may where suitable be utilized for the purposes of title I of this Act, and the Secretary may sell said land and make loans for the necessary improvement thereof to such individuals and upon such terms as shall be in accordance with the provisions of said title.

49 Stat. 2035.
40 U. S. C., Supp. II, §§ 431–434.

Proviso.
Sale of land.

General provisions applicable to sale.

GENERAL PROVISIONS APPLICABLE TO SALE

Reservation by United States.

SEC. 44. The sale or other disposition of any real property acquired by the Secretary pursuant to the provisions of this Act, or any interest therein, shall be subject to the reservation by the Secretary on behalf of the United States of not less than an undivided three-fourths of the interest of the United States in all coal, oil, gas, and other minerals in or under such property.

TRANSFER OF AVAILABLE LANDS

Transfer of available lands.

SEC. 45. The President may at any time in his discretion transfer to the Secretary or the Corporation any right, interest, or title held by the United States, and under the supervision of the Secretary, in any land which the President shall find suitable for the purposes of this Act, and the Secretary or the Corporation, as the case may be, may use and dispose of such land in such manner, and subject to such terms and conditions, as the President determines will best carry out the objectives of this Act.

TRANSACTIONS WITH CORPORATIONS

Transactions with corporations.

SEC. 46. Nothing in this Act shall be construed to authorize the making of any loan, or the sale or other disposition of real property or any interest therein, to any private corporation, for farming purposes.

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SURVEYS AND RESEARCH

Surveys and research.

SEC. 47. The Secretary is authorized to conduct surveys, investigations, and research relating to the conditions and factors affecting, and the methods of accomplishing most effectively, the purposes of this Act, and may publish and disseminate information pertinent to the various aspects of his activities.

VARIABLE PAYMENTS

Variable payments.

SEC. 48. The Secretary may provide for the payment of any obligation or indebtedness to him under this Act under a system of variable payments under which a surplus above the required payment will be collected in periods of above-normal production or prices and employed to reduce payments below the required payment in periods of subnormal production or prices.

SET-OFF

Set-off.

Restriction.

SEC. 49. No set-off shall be made against any payment to be made by the Secretary to any person under the provisions of this Act, by reason of any indebtedness of such person to the United States, and no debt due to the Secretary under the provisions of this Act shall be set off against any payments owing by the United States, unless the Secretary shall find that such set-off will not adversely affect the objectives of this Act.

TAXATION

Taxation.
Ante, pp. 522,525.

SEC. 50. (a) All property which is being utilized to carry out the purposes of title I or title II of this Act (other than property used solely for administrative purposes) shall, notwithstanding that legal title to such property remains in the Secretary or the Corporation, be subject to taxation by the State, Territory, District, dependency, and political subdivision concerned, in the same manner and to the same extent as other similar property is taxed.

(b) All property to which subsection (a) of this section is inapplicable which is held by the Secretary or the Corporation pursuant to this Act shall be exempt from all taxation now or hereafter imposed by the United States or any State, Territory, District, dependency, or political subdivision, but nothing in this subsection shall be construed as affecting the authority or duty of the Secretary under any other law to make payments in respect of any such property in lieu of taxes.

BID AT FORECLOSURE

Bid at foreclosure.

Powers of Secretary.

SEC. 51. The Secretary is authorized and empowered to bid for and purchase at any foreclosure or other sale, or otherwise to acquire property pledged or mortgaged to secure any loan or other indebtedness owing under this Act; to accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary or advisable to protect the investment therein; and to sell or otherwise dispose of such property so purchased or acquired upon such terms and for such considerations as the Secretary shall determine to be reasonable, but subject to the reservation of the rights provided for in section 44.

PENALTIES

Penalties.

SEC. 52. (a) Whoever makes any material representation, knowing it to be false, for the purpose of influencing in any way the action of the Corporation upon any application, advance, discount, purchase, or repurchase agreement, contract of sale, lease, or loan, or any change

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or extension of any of the same by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (2) with intent to defraud the Corporation, or any other body politic or corporate, or any individual, or to deceive, any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation or draws any order, or issues, puts forth, or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (3) with intent to defraud the Corporation, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission contract, or any other act of the Corporation, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Whoever willfully shall conceal, remove, dispose of, or convert to his own use or to that of another, any property mortgaged or pledged to, or held by, the Corporation, as security for any obligation, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

18 U. S. C. §§ 202-207.

(d) The provisions of sections 112, 113, 114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202–207, inclusive), insofar as applicable, are extended to apply to contracts or agreements of the Corporation, which for the purposes hereof shall be held to include advances, loans, discounts, purchase and repurchase agreements, contracts of sale, and leases; extensions and renewals thereof; and acceptances, releases, and substitutions of security therefor.

(e) Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, on conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful act.

Fees and commissions.

FEES AND COMMISSIONS PROHIBITED

Restrictions.

SEC. 53. No Federal officer, attorney, or employee shall, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this Act other than such salary, fee, or other compensation as he may receive as such officer, attorney, or employee. No member of a county committee established under section 42 shall knowingly make or join in making any certification prohibited by section 2 (c). Any person violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

Penalty for violation.

EXTENSION OF [1] TERRITORIES

Extension to territories.

SEC. 54. The provisions of this Act shall extend to the Territories of Alaska and Hawaii and to Puerto Rico. In the case of Alaska and Puerto Rico the term "county" as used in this Act shall be deemed synonymous with the Territory, or any subdivision thereof as may be designated by the Secretary, and payments under section 33 of this Act shall be made to the Governor of the Territory or to the fiscal agent of such subdivision.

[1] So in original.

SEPARABILITY

SEC. 55. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. Separability.

Approved, July 22, 1937.

[CHAPTER 520]

AN ACT

To confer jurisdiction on the Court of Claims to hear, determine, and enter judgment upon the claims of contractors for excess costs incurred while constructing navigation dams and locks on the Mississippi River and its tributaries.

July 23, 1937
[H. R. 2565]
[Public, No. 211]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and enter judgments against the United States upon the claims of the several contractors for alleged excess costs incurred in the execution of their respective contracts, entered into since June 16, 1933, for the construction of locks and dams for the improvement of navigation on the Mississippi River and its tributaries, by reason of the Government having promulgated and enforced, as alleged, due, as alleged, to the national emergency and subsequent to the dates of the several contracts, rules and regulations referred to in the several contracts and misinterpreted and wrongfully enforced or disregarded, as alleged, and rules and regulations not referred to in and inconsistent with the respective contracts, as alleged, which rules and regulations, the enforcement or disregard thereof, deprived the contractors of normal control of their personnel, as alleged, and further by reason of the Government having failed, as alleged, to supply qualified labor under the labor clauses of the respective contracts, resulting in excess costs, including general overhead and depreciation, to the said several contractors on their respective contracts, as alleged; the said judgment or decrees, if any, to be allowed notwithstanding the bars or defenses of any alleged settlement or adjustment heretofore made, res judicata, laches, or any provision of law to the contrary.

Mississippi River, locks and dams; construction, etc.
Claims of contractors for excess costs submitted to Court of Claims.

Judgment.

This Act shall not be interpreted as raising any presumption or conclusion of fact or law but shall be held solely to provide for trial upon facts as may be alleged.

Presumption, etc., of fact or law not raised.

Review of such judgment may be had by either party in the same manner as is provided by law in other cases in such court.

Review of judgment.

Approved, July 23, 1937.

[CHAPTER 522]

AN ACT

To amend the Civil Service Act approved January 16, 1883 (22 Stat. 403), and for other purposes.

July 26, 1937
[H. R. 3408]
[Public, No. 212]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an Act entitled "An Act to regulate and improve the civil service of the United States" (Act of January 16, 1883, 22 Stat. 403), is hereby amended by adding at the end of the sixth paragraph of section 2 of the Act a new paragraph, as follows:

Civil Service Act, amendment.

22 Stat. 403.
5 U. S. C. § 633.

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